

REQUEST FOR PROPOSAL



Department of Executive Services
Finance and Business Operations Division
Procurement and Contract Services Section
206-684-1681 TTY Relay: 711

DATE ADVERTISED: **December 9, 2004**

RFP Title: **Monitoring and Systems Management Tools**

Requesting Dept./ Div.: **King County Department of Executive Services – ITS Division**

RFP Number: **178-04RLD**

Due Date: **December 30, 2004 – no later than 2:00 P.M.**

Buyer: **Roy L. Dodman** roy.dodman@metrokc.gov, (206) 263-4266

There will be no pre-proposal for this RFP.

Sealed Proposals are hereby solicited and will **ONLY** be received by

**King County Procurement Services Section
Exchange Building, 8th Floor
821 Second Avenue
Seattle, WA 98104-1598**

Office Hours - 8:00 a.m. - 5:00 p.m.
Monday - Friday

SUBMITTERS MUST COMPLETE AND SIGN THE FORM BELOW (TYPE OR PRINT)

Company Name		
Address		City/State/Zip Code
Signature	Authorized Representative / Title	
E-mail	Phone	Fax

This Request for Proposal will be provided in alternative formats such as Braille, large print, audio cassette or computer disk for individuals with disabilities upon request.

Sealed proposals are hereby solicited and will be received only at the office of the King County Procurement Services Section at 821 Second Avenue, 8th Floor, Seattle, Washington, 98104 no later than 2 p.m. on the date noted above regarding the acquisition of *Monitoring and Systems Management Tools* for the *King County Information and Telecommunications Services Division*. These services shall be provided to King County in accordance with the following and the attached instructions, requirements, and specifications.

Submittal: King County requires the Proposer to sign and return *this entire Request for Proposal (RFP) document*. The Proposer shall provide *one unbound original* and *five (5) copies* of the proposal response, data or attachments offered, for *six (6) items* total. The original in both cases shall be noted or stamped "Original".

Questions: Proposers will be required to submit any questions in writing prior to the close of business Monday, December 20, 2004 in order for staff to prepare any response required to be answered by Addendum. Questions are best received and most quickly responded to when sent via e-mail directly to the following King County procurement personnel: *Primary* – Roy L. Dodman, Senior Buyer roy.dodman@metrokc.gov / *Secondary* – Cathy M. Betts, Buyer cathy.betts@metrokc.gov. Questions may also be sent via fax or mail to the address above.

SECTION I – GENERAL INFORMATION

- A. King County is an Equal Opportunity Employer and does not discriminate against individuals or firms because of their race, color, creed, marital status, religion, age, sex, national origin, sexual orientation, or the presence of any mental, physical or sensory handicap in an otherwise qualified handicapped person.
- B. All submitted proposals and evaluation materials become public information and may be reviewed by appointment by anyone requesting to do so *at the conclusion* of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between King County and the selected Contractor. Please note that if an interested party requests copies of submitted documents or evaluation materials, a standard King County copying charge per page must be received prior to processing the copies. King County *will not* make available photocopies of pre-printed brochures, catalogs, tear sheets or audio-visual materials that are submitted as support documents with a proposal. Those materials will be available for review at King County Procurement.
- C. No other distribution of proposals will be made by the Proposers prior to any public disclosure regarding the RFP, the proposal or any subsequent awards without written approval by King County. For this RFP all proposals received by King County shall remain valid for ninety (90) days from the date of submittal. All proposals received in response to this RFP will be retained.
- D. Proposals shall be prepared simply and economically, providing a straightforward and concise but complete and detailed description of the Proposer's abilities to meet the requirements of this RFP. Fancy bindings, colored displays and promotional materials are not desired. Emphasis shall be on completeness of content.
- E. King County reserves the right to reject any or all proposals that are deemed not responsive to its needs.
- F. In the event it becomes necessary to revise any part of this RFP, addenda shall be created and posted at the King County Procurement web site. Addenda will also be conveyed to those potential submitters providing an accurate e-mail address. If desired, a hard copy of any addenda may be provided upon request.
- G. King County is not liable for any cost incurred by the Proposer prior to issuing the contract.
- H. A contract may be negotiated with the Proposer whose proposal would be most advantageous to King County in the opinion of the King County Department of Executive Services, all factors considered. King County reserves the right to reject any or all proposals submitted.
- I. It is proposed that if a selection is made as a result of this RFP, a contract with a fixed price/prices will be negotiated. Negotiations may be undertaken with the Proposer who is considered to be the most suitable for the work. This RFP is primarily designed to identify the most qualified firm. Price and schedule will be negotiated with the "first choice" Proposer; negotiations may be instituted with the second choice and subsequent Proposer until the project is canceled or an acceptable contract is executed.

- J. This RFP shall be available for use by all King County Departments, Divisions and Agencies. If orders will be placed by the County's Transit Division, the Contractor will be required to sign and comply with the Federal Transit Administration's (FTA)'s required documentation.
- K. The contents of the proposal of the selected Proposer shall become contractual obligations if a contract ensues. Failure of the Proposer to accept these obligations may result in cancellation of their selection.
- L. A contract between the Contractor and King County shall include all documents mutually entered into specifically including the contract instrument, the RFP, and the response to the RFP. The contract must include, and be consistent with, the specifications and provisions stated in the RFP.
- M. News releases pertaining to this RFP, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the King County Department of Executive Services.
- N. King County Code 4.16.025 prohibits the acceptance of any proposal after the time and date specified on the Request for Proposal. There shall be no exceptions to this requirement.
- O. King County agencies' staffs are prohibited from speaking with potential Proposers about the project during the solicitation.

Please direct all questions to:

Roy L. Dodman / Senior Buyer
(206) 263-4266
roy.dodman@metrokc.gov

or Cathy M. Betts / Buyer
(206) 263-4267
cathy.betts@metrokc.gov

NOTE: Documents and other information is available in alternate formats for individuals with disabilities upon advance request by calling Mary Lou Allwine at 206-296-4210 or TTY711.

- P. Protest Procedure - King County has a process in place for receiving protests based upon either proposals or contract awards. If you would like to receive or review a copy, please contact the Buyer named on the front page of this document or call Procurement Services at 206-684-1681.
- Q. Term Service Requirement

If a contract is awarded based on this RFP, it may contain the following provision:

Contract Extension

The initial contract period will be for one (1) year from the start date of the contract. The term of the contract may be extended in one (1) year increments for two (2) additional one-year periods for a total contract duration of three (3) years, in accordance with the County's best interest and at the sole option of the County. Prices shall remain firm for the duration of the contract period. Reasonable price changes based on market conditions and price/cost analysis *may* be requested, if such escalations are based on changes in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers ("CPI-U") for the Seattle-Tacoma-Bremerton Statistical Metropolitan Area for the preceding calendar year. You may obtain information about the CPI-U in general and the Seattle area in particular by visiting the United States Bureau of Labor Statistics web site at <http://www.bls.gov/cpi/>. In the event the CPI-U (or a successor or substitute index) is no longer published, a reliable government or other non-partisan index of inflation selected by the County shall be used to calculate any adjusted amounts. Requests for any such changes are to be made in writing to the King County Information and Telecommunication Services Division, and approved by the County Executive or his/her designee. Any agreed-to change shall take effect at the time of the contract extension and shall remain in effect throughout the extension period. The parties hereto recognize that such changes could be increases or decreases in the prices; both parties are entitled to benefit from such price changes.

- R. Electronic Commerce and Correspondence. King County is committed to reducing costs and facilitating quicker communication to the community by using electronic means to convey information. As such, most Invitations to Bid and Requests for Proposal, as well as related exhibits, appendices, and issued addenda can be found on the King County Internet Web Site, located at

<http://www.metrokc.gov/finance/procurement>. Please refer to the “RFPs, RFQs & ITBs / New / Goods & Services” portion of the site (note: some documents or portions thereof may not be posted on the site. Please note any special messages regarding a particular solicitation). This information is posted at the Web Site as a *convenience* to the public, and is not intended to replace the King County process of formally requesting bid documents and providing the County with contact information for the potential proposer. Each proposer bears the responsibility to confirm the completeness and accuracy of all documents pertaining to a given solicitation, including the receipt of all issued addenda.

If a proposer downloads a document from the Web Site and does not contact the Procurement Office to obtain a hard copy, the proposer *must* use the “Feedback” (Envelope) button at the bottom of the Web page to convey the proposer’s company name, contact name, mailing address, and phone/fax number to the County. Please note which document/documents were downloaded.

After proposals have been opened in public, the County will post a listing of the Contractors submitting proposals at the King County Internet site. Please refer to the “RFPs, RFQs & ITBs / Awarded / Goods & Services” portion of the site for a listing, as well as a notification of a final award.

Unless otherwise requested, letters and other transmittals pertaining to this RFP will be issued to the e-mail address noted in our files, and after submittal, noted on the first page of this document. If other personnel should be contacted via e-mail in the evaluation of this proposal, or to be notified of evaluation results, please complete the information in the table below.

Contact Name	Title	Phone	E-mail address

- S. Washington State Public Disclosure Act (RCW 42.17) requires public agencies in Washington to promptly make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act, or are otherwise privileged.
- T. Proposals submitted under this RFP shall be considered public documents and with limited exceptions proposals that are recommended for contract award will be available for inspection and copying by the public.

If a Proposer considers any portion of his/her proposal to be protected under the law, the Proposer shall clearly identify on the page(s) affected such words as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.” The Proposer shall also use the descriptions above in the following table to identify the effected page number(s) and location(s) of any material to be considered as confidential (attach additional sheets as necessary). If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the law. If the material is not exempt from public disclosure law, the County will notify the Proposer of the request and allow the Proposer ten (10) days to take whatever action it deems necessary to protect its interests. If the Proposer fails or neglects to take such action within said period, the County will release the portion of the Proposal deemed subject to disclosure. By submitting a Proposal, the Proposer assents to the procedure outlined in this paragraph and shall have no claim against the County on account of actions taken under such procedure.

Type of exemption	Beginning Page / Location	Ending Page / Location

- U. Proposers are urged to use recycled/recyclable products and both sides of paper for printed and photocopied materials, whenever practicable, in preparing responses to this RFP.
- V. Bid Identification Label: Please see the Bid Identification Label on the last page of this document.

SECTION II – PROJECT SPECIFICATIONS AND SCOPE OF WORK.

PART 1 - INTRODUCTION

The purpose of this RFP is to enable King County Information and Telecommunications Services Division (ITS) to acquire a fully integrated software package that provides the monitoring and systems management tools for managing the systems running in IBM WebSphere MQ, CICS Transaction Server, MVS (ZOS) and TCP/IP on the centralized and distributed systems.

PART 2 - HARDWARE AND SOFTWARE STANDARDS

- A. Must work on the IBM Z800-0A1, 82mip, 8GB memory running ZOS V1.4 and Intel processor running Microsoft Windows 2000, Windows XP, Windows NT 4.0 or later releases.
- B. Support TCP/IP protocol.
- C. Support IBM WebSphere MQ for ZOS V5.3 and IBM WebSphere MQ for Windows V5.2 or later releases.
- D. Support CICS Transaction Server V1.3 or later releases for ZOS.
- E. Support ZOS V1.4 or later releases.
- F. Support SNMP protocol.
- G. The proposed software must use the file access method supported by the native IBM ZOS (e.g. VSAM) and Microsoft Windows (e.g. NTFS).
- H. Support CA-ACF2 V6.5 or later releases for external security.

PART 3 - MANDATORY REQUIREMENTS

A. Required Functions

The proposed software must provide the following functions:

1. Offer an integrated solution for managing the performance and monitoring the systems activity of the WebSphere MQ, CICS Transaction Server, MVS and TCP/IP from a single point of control.
2. Ability to navigate from one monitoring tool to another monitoring tool for easier problem diagnosis and resolution. For example, while viewing a CICS thread using the MQ monitor, the product must allow a direct jump to the CICS monitor, or back to the MQ monitor.
3. Exception handling and problem diagnosis -. Ability to set controls, thresholds, and options to detect errors.
4. Provide online graphical and tabular reporting and allow users to navigate to the lowest level of a particular aspect of the system.
5. Ability to send alert and event notification automatically based on user defined thresholds via integrated email, page and WTO.
6. Automated problem correction based on user defined criteria.
7. Ability to collect historical data for analysis and write exception reports, summary reports or historical reports for capacity planning and performance measurement.
8. Provide security and control of access to the system objects at the user and group level.
9. Provide online help for error messages, features, commands, and options.

B. WebSphere MQ Monitoring Tool Requirements

The proposed software must have the ability to monitor the MQ managers on the mainframe and distributed systems on Windows, and view all MQ managers from a single point of control.

1. Provide real-time data for MQ resource utilization on ZOS including CPU and memory usage, buffer pools, page sets, log files, and threads by each queue manager or cluster.
2. Ability to generate online data for activity, snapshot, statistics, and events for each queue manager.
3. Ability to define, view, modify, or delete the initialization parameters, the queues, channels, processes and storage class for each queue manager.
4. Ability to start or stop a queue manager, channel, channel initiator, trigger monitor, command server or listener of a queue manager on the mainframe or distributed platform.
5. Ability to view the status, reset channel sequence number, reset the in-doubt status, or ping, start or stop channels on all queue managers.
6. Ability to view and automatically process dead-letter queues. The DLQ utility must be able to move, delete or re-queue messages based upon user defined criteria.
7. Ability to view, clear and modify messages in the queue and put a message with customized data, header onto a queue.
8. Ability to enter MQ commands from the monitoring tool.

C. CICS Monitoring Tool Requirements

The proposed software must have the ability to view all CICS address spaces on a single display, and the ability to navigate to the lower level to show resource statistics for CICS storage usage, exceptions, performance data, CICS control blocks and tables in each CICS address space.

1. Ability to show resource statistics and status in datasets, LSR pool, transactions, Programs, and file I/O in each CICS address space.
2. Ability to show real-time CICS storage utilization including DSAs, subpools, OSCOR, CICS control blocks, virtual and real storage, CICS nucleus and display short-on-storage conditions.
3. Ability to show active tasks, suspended tasks and provide details such as wait conditions and program usage, and be able to kill a task.
4. Display the status of ISC/MRO connections activity.
5. Display the status of journal and logger activity.
6. Ability to view the CICS tables such as SIT, DCT, PCT, FCT, PPT etc. and navigate to the detailed table definitions.
7. Ability to execute CICS commands.
8. Ability to show the real time performance data on AID, ICE, transaction rates, response times, file I/O, CPU rates and active jobs/tasks.
9. Ability to allow users to select the thresholds, conditions and controls to detect exceptions in each CICS addressing space.

D. MVS Monitoring Tool Requirements

1. Real time monitor for the ZOS system with performance and exception processing and automatic screen update to monitor online response time and batch throughput.
2. Stable and reliable with low system resource usage.
3. Graphic auto update monitor with the ability to jump to system console, and syslog for entering system commands.
4. Provide customizable exception processing for management of site exceptions.
5. Provide job execution detail, DASD, and storage monitoring.

6. Trace facility for information critical to solving execution, delay, or contention problems.
7. Map system address spaces for real time problem resolution.
8. Module replacement at the system level that may normally require an IPL.
9. Ability to monitor and flag enqueues for expediting resolution.
10. Ability to define, view, modify and delete the initialization parameters.
11. Flexibility in tailoring for specific site requirements.

E. TCP/IP Monitoring Tool Requirements

1. Ability to monitor the TCP/IP environment on both the mainframe and distributed systems from a single monitor.
2. Stable and reliable with low system resource usage.
3. Exception monitoring.
4. Provide real time monitoring of IP connections, including Telnet, Socket interfaces, and FTP.
5. Provide historical data analysis, for exceptions including FTP processes.
6. Ability to perform utility functions: Ping, DNS query, display trace route information, and other display commands.
7. Ability to easily perform packet and socket traces.
8. Ability to define, view, modify, and delete the initialization parameters.

PART 4 - DESIRABLE REQUIREMENTS

It is highly desirable that the proposed software will support monitoring and systems management tools in database, network, web services, security, and application services for future growth. For example, King County ITS is interested in a database systems management tool for Oracle, SQL, DB2 and to acquire a networking monitoring tool to manage the routers and switches in our Local Area Network and Wide Area Network.

PART 5 - EVALUATION CRITERIA

The following criteria are used for evaluation of the proposed software for Monitoring and Systems Management Tools:

A. Mandatory Requirements

1. Each bidder must describe in their response to the RFP how their proposed software can satisfy each of the functions described in Part 3., Mandatory Requirements.
2. The proposed software must adhere to the specifications described in Part 2, Hardware and Software Standards.
3. The proposed software shall be judged for ease of use and installation by a Systems Engineer and an Operations Specialist.

King County ITS reserves the right to ask the bidder to install the proposed software for evaluation in a trial period before final acceptance. Failure to provide the requested information or comply affirmatively to the required functions can be reason for disqualification of the bidder. King County shall be the sole judge of its decision.

Please provide a response for all Mandatory Requirements in the following format:

[Restate the requirement]

[Response, provide detail of how the proposed software meets or exceeds the requirement]

Please see the Evaluation Criteria in Appendix A.

B. Pricing

The price should be based on the proposed software running on an IBM Z800-0A1 with 82 MIPs and five Window Servers (agents), including all applicable taxes.

1. Perpetual License Fees for the proposed software package.
2. Annual Maintenance and Customer Support costs, including subsequent release upgrades of the proposed software.
3. On-site training how to install, configure and use of the proposed software.
4. Any other applicable costs.

Please provide all prices in the format described in Appendix B.

C. Reference

Each bidder must provide three (3) references of like size or larger installation. We would like to hear the customer feedback of the technical support, customer services, performance, reliability and resources utilization of the proposed software from your existing customers.

APPENDIX A
EVALUATION CRITERIA

Criteria	Points
A. Required Functions	80
B. WebSphere MQ Monitoring Tool Requirements	100
C. CICS Monitoring Tool Requirements	100
D. MVS Monitoring Tool Requirements	100
E. TCP/IP Monitoring Tool Requirements	80
F. Hardware and Software Requirements	80
G. Ease of Use and Installation	30
H. References	30
I. Total Price	400
Total	1000

Note: If an award is not made based on the written evaluation alone, King County may elect to conduct interviews with the top ranked proposers. If interviews are conducted, they will be worth a total of 200 points. Final award would then be based on the overall score of the written evaluation and oral interviews.

APPENDIX B

PRICING TABLE

Proposed Product(s)	Qty.	List Price	KC Price	Maint Costs	Year 1 Maint.	Year 2 Maint.	Year 3 Maint.	Any other Costs
Total								

SECTION III – STANDARD TERMS AND CONDITIONS

If a contract is awarded from this Request for Proposal, it will contain, at a minimum, the following contract language:

PART 1 - Administration

This Contract is between the County and the Contractor who shall be responsible for providing the Work described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder. Such personnel shall not be current or former employees of the County without the written approval of the County. Any current or former County employee who is involved, or becomes involved, in the performance of the Contract shall be disclosed; and the County shall determine whether conflicts of interest or ethical violations exist under the circumstances.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for a response.

PART 2 - Contract Changes

No oral order or conduct by the County shall constitute a change to the Contract – neither an Administrative Change nor a Contract Amendment. Both parties shall agree to Contract changes in writing.

If any Contract change causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every Contract change may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract changes do not require notice to sureties by County.

Ref: [King County CON 7-8-1 \(AEP\)](#).

PART 3 - Cost or Price Analysis

The County may require Cost or Price Analysis for the evaluation of Contract changes, terminations and revisions to Contract requirements or other circumstances as determined by the County.

PART 4 - Termination for Convenience / Default/ Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract closeout costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

B. Termination for Default

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

- A "Notice to Cure" shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
- If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination.
- The Contractor shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
- The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.
- King County may immediately terminate this Contract by written notice to the Contractor and may regard the Contractor as in default of this Contract if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. In the event that any of the above events occurs, the Contractor shall immediately notify the County of its occurrence.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of this Contract for Services rendered prior to the effective date of termination; and,
2. The Contractor shall be released from any obligation under this contract or a related Purchase Order to Provide further Work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

PART 5 - Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or

comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default. Whenever a force majeure event causes the Contractor to allocate limited resources between or among the Contractor's customers, the County shall receive no less priority in respect to such allocation than any of the Contractor's other customers.

PART 6 - Washington State Sales Tax

The County shall make payment directly to the State for all applicable State sales taxes in case the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor is so registered, it shall add the sales tax to each invoice and upon receipt of payment from the County, promptly remit appropriate amounts to the State of Washington.

PART 7 - Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or Services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and Subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

PART 8 - Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee, and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

PART 9 - Indemnification and Hold Harmless

A. Patent and Copyright Indemnity

The Contractor shall protect, indemnify, defend and save harmless the County from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights. So long as the County gives Contractor prompt notice of any infringement claim brought against the County regarding the Software and the County gives Contractor information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Contractor shall, in its reasonable judgment and at its option and expense: (i) obtain for the County the right to continue using the Software; (ii) replace or modify the Software so that it becomes noninfringing while giving equivalent performance; or (iii) if Contractor cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that shall be returned to the County. Contractor shall have no liability to indemnify or defend the County to the extent the alleged infringement is based on: (i) a modification of the Software the County or others authorized by the County but not by the contractor; or (ii) use of the Software other than in accordance with the Documentation. If the County is required to defend itself or enter into a settlement agreement due to Contractor's failure to defend, Contractor shall indemnify the County for its costs and expenses as well as any judgment entered against the County.

B. Indemnification For All Other Actions

Contractor shall protect, defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to Persons and/or damage to tangible property, arising out of or in any way resulting from the acts or omissions of the Contractor its officers, employees and/or agents. Contractor's indemnification obligation shall include but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor expressly waives by mutual negotiation, with respect to the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event the County incurs any costs including attorneys' fees to enforce the provisions of this subsection, all such costs and fees shall be recoverable from the Indemnitor.

C. Limitation of Liability

Except for the County's intentional and willful violations of Contractor's intellectual or proprietary rights, which can be attributed to the County management, and injuries to persons by either party, neither party shall be liable for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising, even if it has been advised of the possibility of such damages. Excluding damages incurred under the paragraphs A and B, either party's liability for damages to the other under this Contract shall be limited to (___ X times) the value of the contract or one million dollars whichever is greater. The parties agree to the allocation of liability of risk set forth in this subsection.

PART 10 - Applicable Law and Forum

Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

PART 11 - Conflicts of Interest and Non-Competitive Practices**A. Conflict of Interest**

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.

C. Disclosure of Current and Former County Employees

To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating this Contract.
3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

Ref: [K.C.C. 3.04.015, 3.04.20, 3.04.30, 3.04.035, 3.04.060](#)

PART 12 - Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

PART 13 - Mediation and Arbitration

Nothing in this subsection precludes any party from seeking relief at any time from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

PART 14 - Retention of Records, Audit Access and Proof of Compliance with Contract**A. Retention of Records**

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

1. Federal, state or County auditors shall have access to Contractor's and its Subcontractors' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or County auditors shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).
3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

C. Proof of Compliance with Contract

The Contractor shall, upon request, provide the County with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

Ref [KCC 2.20.035, 2.20.040, 2.20.050, RCW 43.09.050, 43.88, 42.40.020, 42.40.040, 42.160](#).

PART 15 - Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

PART 16 - Recycled Products Policy

The County promotes the purchase and utilization of recycled material and products where available. Recycled material means material and byproducts, which have been recovered or diverted from solid waste disposal for the purpose of recycling. It does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the event of similar pricing, availability and other factors affecting the solicitation, preference may be given to products containing recycled material.

Ref: [KCC 10.14](#) and [CON 7-1-2](#) (AEP).

PART 17 - Nondiscrimination and Equal Employment Opportunity**A. Nondiscrimination in Employment and Provision of Services**

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery

of services or any other benefits under this Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

B. Nondiscrimination in Subcontracting Practices

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with Subcontractors and suppliers, the Contractor shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

Ref: [KCC 12.16.020](#).

C. Compliance with Laws and Regulations

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

D. Record-keeping Requirements and Site Visits

The County may, at any time, visit the project site, Contractor's and Subcontractors' offices to review records related to the solicitation, utilization, and payment to Subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this section. The Contractor shall provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to Subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to the County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Discrimination In Contracting

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither Contractor nor any party subcontracting under the authority of this Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

F. Compliance with Section 504 of the Rehabilitation Act of 1973

For all contracts providing consulting, maintenance, training or other services, the Contractor shall complete a Disability Self-Evaluation Questionnaire. The 504/ADA Disability Assurance of Compliance will cover all programs and services offered (including any services not subject to this Contract) for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Contractor shall complete a 504/ADA Disability Assurance of Compliance within ten (10) Days after receiving written notice of selection. The Contractor shall retain a copy of the completed 504/ADA and submit to the Buyer the original final two (2) signed pages titled "504/ADA Disability Assurance of Compliance", which will be attached to the Contract.

Ref: [KCC 12.16.060 D](#).

PART 18 - Disadvantaged Business Enterprise (DBE) Participation

- A. Nondiscrimination 49 CFR part 26. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR, part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the County deems appropriate.
- B. DBE Program. The County has determined that no DBE goal shall be established for this Contract. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance.

Ref: [KCC 28.20](#).

- C. Efforts to Increase DBE Participation. Even though this Contract has no DBE goal, the County still encourages Contractors to pursue opportunities for DBE participation. To that end, Contractors are encouraged to:
1. Advertise opportunities for Subcontractors and suppliers in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting proposals directly from DBEs.
 2. Utilize the services of available minority community organizations, minority consultant groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.
 3. Establish delivery schedules, where requirements of the contract allow and encourage participation by DBEs and other small businesses.
 4. Achieve DBE attainment through joint ventures.
- D. DBE Listing. A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available from that office at (360) 753-9693 or at www.omwbe.wa.gov. For purposes of this Contract, a DBE firm shall be certified by OMWBE as of the date and time of bid submittal.
- E. Procedure Applicable when DBEs Are Utilized. Concurrent with the use of any DBE Subcontractor or supplier the Contractor shall provide notice of such use in writing to the King County Business Development and Contract Compliance Section (BDCC). Upon receipt of said notice, BDCC shall provide the Contractor with the applicable procedures for counting DBE participation. Assistance with this section is available from BDCC at (206) 205-0700. Notice referenced herein should be delivered to the following address:

King County
Office of Business Relations and Economic Development
M.S. KCC-EX-0402
516 3rd Avenue, Room 550
Seattle, WA 98104-3271

Phone: 206-205-0700 Fax: 206-296-0194

PART 19 - Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

PART 20 - Nonwaiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

PART 21 - Non-Discrimination in Benefits to employees with Domestic Partners

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. The Contractor shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a contract. The EB Compliance forms, and Ordinance 14823 are available online at:

www.metrokc.gov/finance/procurement/forms.asp.

SECTION IV – SPECIFIC CONTRACTUAL TERMS AND CONDITIONS**PART 1 - Execution of the Contract**

The documents constituting the Contract between the County and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed on the Contract, page 2. The date the Contract is countersigned by the County is the Contract effective date. No other act of the County shall constitute Contract award. After Contract award, the County shall issue Purchase Orders detailing the Work to be performed.

The Contract may be executed in counterparts, any of which shall be deemed an original and which shall together constitute one Contract.

PART 2 - Contract Term

The term of this Contract shall be three (3) years in one (1) year increments, commencing on the effective date of the Contract and subject to the termination provisions under Termination for Convenience / Default / Non-Appropriation. The Warranty Period begins at Final Acceptance for a period of twelve (12) months. Upon the completion of the Warranty Period, the Maintenance Agreement runs from year to year unless terminated as described in this Contract. The maximum term for this Contract, consisting of the base period plus extensions, is three (3) years unless extended by written agreement signed by all parties.

PART 3 - Payment Procedures**A. Invoices**

The Contractor for Work Accepted by the County shall furnish invoices to:

King County Accounts Payable
M/S EXC-ES-0875
Exchange Building, 8th floor
821 Second Avenue
Seattle, WA 98104-1598

B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the County will make payment directly to the State.

C. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract no later than ten (10) Days from the receipt of each payment the Contractor receives from the County.

PART 4 - Advance Payment Prohibited

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

Ref: Article VIII, § 7 of the Washington State Constitution.

PART 5 - Pricing

- A. Prices shall remain firm for the duration of the first Contract period. Price changes based on market conditions and price/cost analysis may be made after the first Contract period. The Contractor shall supply documentation satisfactory to County such as documented changes to the Producers Price Index (PPI), the Consumer Price Index (CPI) or a manufacturer's published notification of price change(s). Requests for any price change are to be made in writing to the Buyer in the Procurement Services Division office. Any price change shall be mutually agreed upon and shall take effect at the time of the Contract extension and remain throughout the extension
- B. Reimbursement for meals shall be limited to the per diem rates established by federal travel requisitions for the host city in the Code of Federal Regulations, 41 CFR § 301, App.A.
- C. Accommodation rates shall not exceed the federal lodging limit plus host city taxes. The Contractor shall always request government rates.
- D. The direct costs contained in A, B and C above shall only be authorized by the County Project Manager for Contractor staff living beyond commuting distance, normally considered to be for the travel beyond 100 miles of 821 Second Avenue, Seattle, WA.
- E. Air travel shall be by coach class at the lowest price available at the time the County Project Manager requests a particular trip. In general, a trip is associated with a particular Work activity of limited duration and only one round-trip ticket, per person, shall be billed per trip.
- F. Cost for equipment, materials and supplies, such as approved equipment rental; telephone, telegraph and cable expenses; reproduction costs including blueprinting, photographing, telecopying, mimeographing, photocopying and printing; express charges; commercial printing, binding, art Work and models; and, computer programming and data entry costs shall be billed without markup.
- G. Authorized subcontract Services; Provided that the limitations set forth in the period. The parties hereto recognize that such changes could be increases or decreases in the prices; both parties are entitled to benefit from such price changes.

PART 6 - Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

PART 7 - Direct Costs Related to Changed Work

Direct costs for additional Work shall be billed at cost without markup.

Reimbursement of Contractor travel, lodging and meal expenses are limited to the eligible costs based on the rates and criteria established in King County Code, chapter 3.24.

- A. The mileage rate allowed by King County shall not exceed the current Internal Revenue Services (IRS) rates per mile as allowed for business related travel. The IRS mileage rate shall be paid for the operation, maintenance and depreciation of individually owned vehicles for that time which the vehicle is used during Work hours. Parking shall be the actual cost. When rental vehicles are authorized,

government rates shall be requested. If a person does not request government rates, he/she may be personally responsible for the difference. Please reference the IRS web site for current rates.

<http://www.irs.gov/>. Above paragraphs shall be applicable to such subcontract services.

- B. Other direct costs, not listed above, may be billed if the County has given prior approval.
- C. Receipts required for purchases \$10 and over, not including meals.

PART 8 - Acceptance Process

The County may give iterative acceptances as the Work is accomplished either by phase or milestone. The Contractor will give the County "notice of completion" of Work related to a specific milestone following the Contractor's completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

- A. Acceptance Process. Upon completion of the milestone deliverables, the Contractor will notify the County and the Acceptance process will commence. Acceptance shall be based on conformance with the milestone guidelines. After notice by Contractor of completion of the milestone, County will issue a written notice of milestone Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the deliverable guidelines.
- B. Correction of Deficiencies Process. If a deliverable is rejected, Contractor will have a commercially practicable time to correct items documented in the County's notification of rejection. Following the delivery of Contractors' notice that the Work has been corrected, the County will issue a written notice of Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining Work not in compliance with the milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the deliverable(s) fails to comply with the milestone after Contractor's second attempt to correct the Work and no clear plan can be agreed upon between the County Project Manager and the Contractor's Project Manager, the County will determine the appropriate corrective actions.

PART 9 - Final Acceptance Process

The County shall begin the Final Acceptance process in accordance with the Contract as follows:

- A. The parties shall agree on the start date for the Acceptance test.
- B. The Acceptance Test shall include thirty (30) Days of continuous operation of the Work without material defect in accordance with the Contract in the County's fully implemented production environment.
- C. If the County Accepts the Work, the County will send a notice of Final Acceptance to the Contractor.
- D. If County determines that the Work is not Acceptable, the County shall notify the Contractor in writing, describing the deficiencies.
- E. The Contractor shall either provide a detailed, written plan to achieve Final Acceptance or to make corrections or replacements within a mutually agreed upon time period with no charge to the County. The parties shall mutually agree on a start date for beginning another Acceptance test.
- F. Another thirty (30) Day successful operation period shall follow any corrections or replacements to the Work. Two (2) or more thirty (30) Day operation Acceptance test periods can occur if mutually agreed to by the parties.
- G. If the County Accepts the Work following a second or subsequent Acceptance test the County will send a notice of Final Acceptance to the Contractor.
- H. If the Contractor does not correct or replace the unacceptable Work the County may declare a breach of contract.

PART 10 - Warranty Provisions

- A. No Waiver of Warranties and Contract Rights. Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.
- B. Warranty Term. The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.
- C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors. The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

PART 11 - Express Warranties for Software

- A. Contractor warrants that on the date of Final Acceptance, the Software provided hereunder shall be free from significant programming Errors and when used in accordance with user manuals shall operate and conform to the Scope of Work, performance capabilities, functions and other descriptions and standards as identified in this Contract and all supplemental information Provided by Contractor.
- B. Contractor warrants that it has full power and authority to license or sublicense the Software to the County without the consent of any other Person.
- C. Contractor warrants that the performance of the Services related to the Software and the licensed use of the Software by County as permitted by this Contract, including copying, shall not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure or other right of any third party.
- D. Contractor warrants that the Software, the License to the County to use the Software, instructions for use of the Software and the performance by Contractor of the Services, shall be in compliance with all applicable laws, rules and regulations.
- E. Contractor warrants the tapes, CD's, DVD's or other media delivered to the County to be free of defects in materials and workmanship under normal use for sixty (60) Days from the date of receipt by the County.
- F. Contractor warrants that the Software provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as "backdoor shutdown mechanisms", "time bombs", "automatic unauthorized connection to outside systems", programming that responds to or Provides information to outside systems' "pinging", and features that can "retire", "shut down", "cripple" or "stop" the Software. Contractor further warrants that neither the Software alone or through Contract with the Contractor is capable of electronic self-help that may deprive the County of the use of the licensed Software.
- G. Contractor warrants that future maintenance or Software releases shall not degrade the Software, cause a breach of any other warranty or require the County to purchase new or additional hardware or Software for continued operation of the Software.

- H. The Contractor warrants functionality as described in the Scope of Work and represents that the configuration identified in the Contract has been specifically selected and designed for the County as being an operationally efficient integration of hardware, Software and Services.
- I. Contractor shall be responsible for providing and implementing a Software system that is successfully integrated into the existing system environment of the County and meets the functional requirements as specified in this Contract.

THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

PART 12 - Warranty Remedies

- A. If at any time during the twelve (12) month period immediately following Final Acceptance of any Work covered by this Contract, Contractor or the County discovers one or more material defects or Errors in the Work or any other aspect in which the Work materially fails to meet the provisions of the warranty requirements herein Contractor shall, at its own expense and within thirty (30) Days of notification of the defect by the County, correct the defect, Error or nonconformity by, among other things, making additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties herein. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.
- B. During the sixty (60) Day media warranty period, the County may return defective media to Contractor and it shall be replaced without charge to the County.
- C. In order to qualify for remedial action under these warranties, the County shall report a warranty failure to the Contractor in writing within thirteen (13) months from the date of Final Acceptance. The Contractor shall not be responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the product(s) by the County or anyone other than the Contractor or its Subcontractors, unless under Contractor's or its Subcontractor's direction.
- D. The County shall give written notice of any defect to the Contractor. If the Contractor has not corrected defect with thirty (30) Days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case, the County shall charge-back the cost for such warranty repair to the Contractor.
- E. The Contractor is responsible for all costs of repair or replacement in order to restore the Work to the applicable Contract requirements or Scope of Work, including shipping charges, for Work found defective within the warranty period, regardless of who actually corrects the defect.

PART 13 - Defective Work

Prior to Final Acceptance, when and as often as the County determines that the Work, furnished under the Contract is not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to the Contractor. Within seven (7) Days of receiving such written notification, the Contractor shall supply the County with a detailed, written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. The County may reject or accept this plan at its discretion. If the County rejects the plan the Contractor may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the County by law, including those available under the Uniform Commercial Code, Title 62A RCW.

PART 14 - Equipment and Software Warranty Process

During the warranty period, equipment and software support shall be as described in the Maintenance Agreement.

PART 15 - Equipment and Software Maintenance

After the warranty period, equipment and Software Maintenance support shall be as described in the Maintenance Agreement, which shall be attached to the contract.

PART 16 - Ownership/Rights to Work Product

- A. All data and Work (collectively called "Work Product") produced pursuant to this Contract shall be considered "work made for hire" under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and shall be owned by King County. Contractor is hereby commissioned to create the Work Product. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- B. If for any reason the Work Product would not be considered a "work made for hire" under applicable law, Contractor assigns and transfers to the County the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- C. Contractor shall execute all documents and perform such other proper acts, as the County may deem necessary to secure for the County the rights provided pursuant to this section.
- D. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of the County. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- E. Work Product developed for this Contract including preexisting material needed to operate the Work Product shall be transferred to the County with a non-exclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such preexisting material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license.

PART 17 - Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

PART 18 - Nondisclosure of Data

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

PART 19 - Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to

disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

PART 20 - Board of Ethics Disclosure Requirement

Pursuant to King County Code 3.04.120, the consultant shall file a Consultant Disclosure Form with the Board of Ethics and the King County Executive.

PART 21 - Pricing of Spare Parts

The County shall have the right to conduct a Cost or Price Analysis on specific spare parts if pricing appears to be in excess of standard industry pricing for similar parts. Any differences shall be subject to negotiations to the satisfaction of the County. The County is not required to purchase spare parts under this Contract if it can purchase the same item(s) from another source under terms that are more advantageous to the County.

PART 22 - No Prototype Components

All hardware, Software and Work, shall be in production and be used by customers comparable to the County at the time of the Contract effective date. Test or prototype items shall be clearly identified as such. A sufficient inventory of the Work shall be available to meet delivery requirements.

PART 23 - Patents and Royalties

The Contractor is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

PART 24 - Changed Requirements

New federal, state and county laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through subsection 1-2, Contract Changes.

PART 25 - Patents, Copyrights and Rights in Data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County. The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other Work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page, (or in such case of maps, in the name block), as may be requested by the County. The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract.

PART 26 - Escrow Agreement

If required, a source code escrow agreement shall be executed as part of this Contract.

The Contractor shall maintain a current copy of the program source code with all future Updates, improvements, additions and modifications.

In the event that the Contractor ceases to support the programs, the escrow agent shall furnish King County, at no cost to the County, a copy of the relevant escrowed material as defined in the Escrow Agreement. Any escrowed material furnished under this provision shall be considered licensed subject to the terms of this Contract and accompanying Software License Agreement.

PART 27 - Software License

Subject to the terms and conditions set forth in the Contract and the Software License Agreement, including payment of the license fees by County to Contractor, Contractor hereby grants to County a perpetual, non-exclusive, non-transferable license to use the Software, including any Software and source code released pursuant to an Escrow Agreement, as well as any Documentation and training materials.

PART 28 - Disaster Recovery

In the event a disaster is declared at any County site(s), Contractor will allow the County the right to use the Software in accordance with the Software License Agreement, at the recovery site identified by the County, at no additional cost to the County for the Services or maintenance thereof.

PART 29 - Authorized Users

Only employees, agents, and Contractors who need to use the Software in the performance of their duties for the County and who are authorized and enabled by the County may access and utilize the Software.

PART 30 - Bug Status Reports

The Contractor shall Provide bug status reports specifying all known outstanding bugs in the current version of the Software. The initial bug status report shall accompany the Software when delivered. Subsequent reports shall be provided monthly or as agreed to by the County Project Manager.

PART 31 - Enhancements, Upgrades, Replacements and New Versions of Software

- A. The Contractor agrees to provide to the County, at no cost, prior to, and during installation and implementation of the system any Software/firmware Enhancements, Upgrades and replacements which the contractor initiates or generates.
- B. As long as the County has a maintenance agreement for the Software, the Contractor shall notify the County of the availability of newer versions of the Software and within thirty (30) days provide the County with this new version. The Contractor shall provide free Updated Documentation in the form of new revision manuals or changed pages to current manuals consistent with the original Documentation supplied and reflecting the changes included in the new version of the Software. The Contractor shall Provide bug status reports specifying all known, outstanding bugs in the new Software versions. The information shall be updated periodically as new information and Work-around become known. The Contractor shall also Provide free installation instructions, procedures and any installation program required by the installation.

PART 32 - HIPAA – Protecting Patient Privacy

The work under this Contract may require compliance with “The Health Insurance Portability and Accountability Act of 1996” (HIPAA). Information on this Act can be found at the Office of Civil Rights website: <http://www.hhs.gov/ocr/hipaa/>.

SECTION V – INSURANCE REQUIREMENTS

PART 1 - Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified

representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County received notice at least forty-five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.

- B. The Contractor shall, upon demand of the County, deliver to the County all such policy of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- C. Failure to Provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

PART 2 - Insurance Requirements

- A. The Contractor shall obtain and maintain the minimum insurance set forth below.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability. Errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims Made" basis, the contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work that is the subject of this Contract.

- B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1. General Liability

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.

- 2. Automobile Liability

Insurance Service form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

- 3. Professional Liability

Professional Liability, Errors and Omissions coverage.

In the event that Services pursuant to this Contract either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be Provided.

- 4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

5. Employers Liability or "Stop Gap":

The protection Provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection Provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

The Contractor shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, Personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
2. Professional Liability, Errors and Omissions: \$1,000,000 per Claim and in Aggregate.
3. Workers' Compensation: Statutory requirements of the state of residency.
4. Employers Liability Stop Gap: \$1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

E. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Use the above exact language on the Endorsement Form.

To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the contractor in any way.

The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

F. Acceptability of Insurers

Unless otherwise approved by the County:

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

G. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. *Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.*

H. Work Site Safety

The Contractor shall have the “right to control” and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor’s compliance with these provisions.

I. Endorsements

Endorsement must be included with insurance form, i.e. standard industry forms: “2010 111” or “GC 76 80 10 00. *The County requires this Endorsement to complete the Contract.*

SECTION VI – CONTRACTOR RESPONSIBILITIES

PART 1 - Implementation

System configuration and prototyping is the primary responsibility of the Contractor. The core Software system shall be configured, prototyped, refined, tested, updated and documented by the Contractor. The County shall accept the system for roll out only after a successful user Acceptance test is performed.

The Contractor shall not be relieved of its obligation to Provide a completely integrated system if the County creates interface programs.

PART 2 - Contractor Responsibilities

The Contractor shall be responsible for performing the Work described in the Scope of Work. Each written deliverable shall require an acceptable preliminary draft to precede Acceptance of deliverable and work completion.

SECTION VII – REQUIRED FORMS


The following completed forms will be required from the selected contractor, prior to contract award:

- A. King County Personnel Inventory Report
- B. Affidavit and Certificate of Compliance with King County Code 12.16
- C. Statement of Compliance - Union or Employee Referral Agency Statement (if applicable)
- D. King County Code 3.04.120 and Consultant Disclosure Form
- E. 504/ADA Disability Assurance of Compliance and Corrective Action Plan
- F. Equal Benefits Compliance Declaration Form

Copies of these forms are available by contacting the King County Procurement and Contract Services Division. They are available in paper form, or may be obtained via e-mail. Please contact Cathy Betts at 206-263-4267 or Roy L. Dodman at 206-263-4266, or by sending an e-mailed request to cathy.betts@metrokc.gov or roy.dodman@metrokc.gov.

SECTION VIII – BID PROPOSAL CHECKLIST

- A. One (1) signed copy of entire RFP package.
- B. One (1) signed copy of any Addendum that was issued. (If it has signature box at bottom of first page, it must be returned.)
- C. One (1) unbound copy of proposal response marked “Original.”
- D. Five (5) copies of proposal response.
- E. Complete the Bid Identification Label below (or reasonable facsimile) and attach it to a prominent place on the exterior of the submission envelope, box, etc.

URGENT – SEALED BID ENCLOSED			
Do Not Delay – Deliver Immediately			
U R G E N T	 King County	King County Procurement & Contract Services Section Exchange Building, 8 th Floor 821 2nd Ave, EXC-FI-0862 Seattle, WA 98104-1598	U R G E N T
	Bid No.	RFP 178-04RLD	
	Bid Title	Monitoring & System Management Tools	
	Due Date		
	Vendor		